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MICHAEL RODAK, JR. CLERK

No. 79-5530

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NATION E. MEYER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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MEMORANDUM FOR THE UNITED STATES

Petitioner contends (Pet. 3-5) that the district court erred by imposing a special parole term as part of his sentence for conspiracy to violate the narcotics laws.

1. Following a plea of guilty entered in the United States District Court for the Western District of North Carolina, petitioner was convicted of conspiring to distribute a controlled substance, in violation of 21 U.S.C. 846. Petitioner was sentenced to three years' imprisonment to be followed by a two-year term of special parole. The court of appeals affirmed (Pet. App. 1-4).

2. The question presented in this case is identical to the question presented in Bifulco v. United States, No. 79-5010, petition for certiorari granted October 9, 1979.[1/] In that case,

1/ We are sending petitioner's counsel copies of the government's response to the petition in Bifulco.

the court of appeals held that it is proper to impose a special parole term for a conspiracy to commit a narcotics offense, in violation of Section 846, whenever the underlying substantive offense itself requires imposition of a special parole term. Bifulco v. United States, 600 F.2d 407, 409-410 (2d Cir. 1979). With only one exception,[2/] each of the courts of appeals to have considered this question has reached the same conclusion. See United States v. Sellers, 603 F.2d 53, 58 (8th Cir. 1979), petition for certiorari pending No. 79-5485; Cantu v. United States, 598 F.2d 471, 472 (5th Cir. 1979); United States v. Burman, 584 F.2d 1354, 1357-1358 (4th Cir. 1978), cert. denied, 439 U.S. 1113 (1979); United States v. Jacobson, 578 F.2d 863, 867-868 (10th Cir.), cert. denied, 439 U.S. 932 (1978). We believe that the decision in this case is correct and that imposition of a special parole term as part of petitioner's sentence was proper. Because this question is now pending before the Court, however, we suggest that the Court defer consideration of this petition pending disposition of Bifulco v. United States.

Respectfully submitted.

WADE H. McCREE, JR.
Solicitor General

NOVEMBER 1979

2/ United States v. Mearns, 599 F.2d 1296 (3d Cir. 1979), petition for certiorari pending, No. 79-415.